



Signed: September 10, 2005

*Leslie Tchaikovsky*

LESLIE TCHAIKOVSKY  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
HAROLD WAYNE HUTSON, etc.,  
Debtor.

No. 04-41779 TG  
Chapter 13

CITY OF VALLEJO,

A.P. No. 05-4253 AT

Plaintiff,

vs.

HAROLD WAYNE HUTSON, etc.,  
et al.,

Defendant.

**MEMORANDUM RE CITY'S APPLICATION FOR PAYMENT OF FEES AND COSTS**

The application of the City of Vallejo for attorneys' fees and costs in connection with the filing of the above-captioned proceeding came before the Court on September 8, 2005 at 2:00 p.m. Appearances were stated on the record. At the conclusion of the hearing, the Court took the matter under submission so as to determine whether the filings to date gave the Court a sufficient

1 basis to make a ruling on the application. After reviewing the  
2 record, the Court concludes that they do not.

3 The complaint alleges that a series of stop notices were  
4 served by one of the above-captioned debtor's (the "Debtor")  
5 subcontractors. After the first two were served, a release bond  
6 was provided to the City of Vallejo (the "City"), and the funds  
7 then due were released. However, thereafter, the City still held  
8 approximately \$20,000 in retention funds. The work was completed  
9 on March 30, 2004. The Debtor filed a chapter 13 petition on  
10 April 1, 2004.

11 The subcontractor served a third stop notice on April 13,  
12 2004. This may or may not have been duplicative of the earlier  
13 stop notices. No release bond was provided with respect to this  
14 stop notice. As a result, the City refused to release the  
15 retention funds to the Debtor and instead filed an interpleader  
16 action, first in state court, later in this court. The complaint  
17 purports to attach the stop notices and other documents as  
18 exhibits. However, no exhibits to the complaint were filed.

19 Thereafter, the City filed an application for fees and  
20 expenses, summarizing the allegations of the complaint and  
21 asserting that it had incurred certain attorneys' fees and  
22 expenses in connection with filing the interpleader. No  
23 evidence--e.g., declarations under penalty of perjury by persons  
24 competent to testify to the facts stated, copies of relevant  
25 documents identified by the declarations--was filed supporting  
26 this application. In addition, the summary of the time spent and

1 work done was insufficiently detailed to permit the Court to  
2 determine whether the fees are reasonable.

3 Defendants Insurance Company of the West and Explorer  
4 Insurance Company (the "Sureties") filed an opposition to the  
5 City's fee application. For various reasons, they contended that  
6 the City was required by law, once the release bonds were  
7 provided, to release the retention funds. They do not address the  
8 fact that a third stop notice was served by the subcontractor  
9 after the release bond was provided and the monies then due were  
10 released. Moreover, their opposition suffers from the same lack  
11 of supporting evidence as the City's fee application. The City's  
12 response to the opposition is also unsupported by any evidence.

13 In their opposition, the Sureties contend that the  
14 interpleader action and the City's fee application violated Rule  
15 9011 of the Federal Rules of Bankruptcy Procedure. However, they  
16 do not appear to have complied with Rule 9011(c)(1) by requesting  
17 this relief in a separate motion and giving the City 21 days after  
18 service of the motion to withdraw the offending pleading.  
19 Therefore, their request for sanctions will be denied.

#### 20 CONCLUSION

21 The City's application for fees and costs will be denied  
22 without prejudice. If the City wishes to proceed with its  
23 application, it should file and serve on interested parties within  
24 30 days sufficient evidence to support the factual allegations of  
25 the complaint and its application, including a detailed  
26 description of the work performed and time spent for which fees

1 and costs are requested. If this is done, the Sureties will have  
2 14 days from the date of service of the supplement to the  
3 application to file any further opposition, with appropriate  
4 supporting evidence. The City will then have an additional 7 days  
5 from the date of service of any further opposition to file a  
6 response. The City should submit a proposed form of order when  
7 the additional briefing is complete. The order will alert the  
8 Court to the fact that the matter is ripe for decision. No  
9 further hearing will be set unless the Court concludes that one is  
10 required.

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COURT SERVICE LIST

Matthew P. Shelton  
Law Offices of J. Michael Pisias, Jr.  
177 Post St., Ste. 700  
San Francisco, CA 94108

Claudia M. Quintana  
Deputy City Attorney  
City of Vallejo  
555 Santa Clara St.  
P.O. Box 3068  
Vallejo, CA 94590

Martha G. Bronitsky  
Chapter 13 Trustee  
P.O. Box 5004  
Hayward, CA 94540-5004